

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Louis & Dorothy Lippman

:

:

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Personal Income :
Tax under Article 22 of the Tax Law and Chapter 46, :
Title T of the Administrative Code of the City of :
New York for the Year 1977. :

State of New York
County of Albany

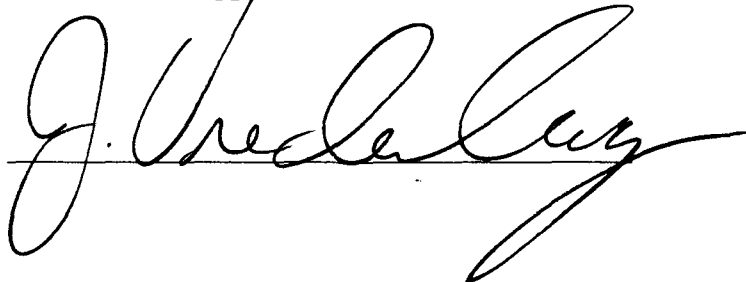
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 14th day of December, 1982, he served the within notice of Decision by certified mail upon Louis & Dorothy Lippman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Louis & Dorothy Lippman
3140 South Ocean Dr.
Hallandale, FL 33140

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
14th day of December, 1982.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
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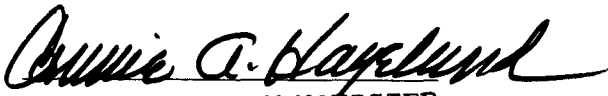
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 14th day of December, 1982, he served the within notice of Decision by certified mail upon Barry M. Liebman the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Barry M. Liebman
1 Berkley Dr.
Port Chester, NY 10573

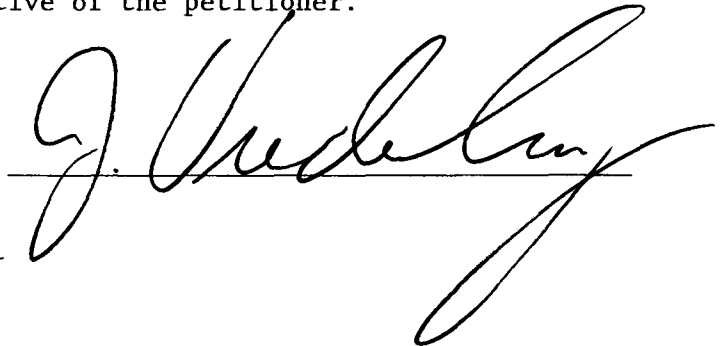
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
14th day of December, 1982.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

December 14, 1982

Louis & Dorothy Lippman
3140 South Ocean Dr.
Hallandale, FL 33140

Dear Mr. & Mrs. Lippman:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 & 1312 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Barry M. Liebman
1 Berkley Dr.
Port Chester, NY 10573
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
LOUIS and DOROTHY LIPPMAN	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law and Chapter 46, Title T of the	:	
Administrative Code of the City of New York	:	
for the Year 1977.	:	

Petitioners, Louis and Dorothy Lippman, 3140 South Ocean Drive, Hallandale, Florida 33140, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law and New York City personal income tax under Chapter 46, Title T of the Administrative Code of the City of New York for the year 1977 (File No. 25901).

A formal hearing was scheduled on January 19, 1982. At the hearing, petitioners' representative decided to waive the hearing and submit the case to the State Tax Commission based upon the entire record contained in the file. After due consideration of said record, the Commission renders the following decision.

ISSUE

Whether petitioners were nonresidents of New York State and City during 1977.

FINDINGS OF FACT

1. Petitioners, Louis and Dorothy Lippman, timely filed (separately on one return) resident and nonresident New York State income tax returns for 1977. On said returns, they indicated that they were residents of New York State for six (6) months. Attached to the returns was a Schedule for Change of

Resident Status (Form CR-60.1). On this form, they checked the box indicating "New York State and City of New York change of residence at the same time." They also indicated their period of residence as from May 4, 1977 to October 31, 1977. Petitioners allocated their income and deductions between their resident and nonresident period.

2. On October 25, 1978, the Audit Division issued a Statement of Audit Changes to petitioners wherein it was stated:

"Removal from New York State for a temporary and limited period of time does not constitute a permanent change of residence and the person retains the status he had before such removal.

Based on all available information you are still considered a full year resident of New York State and New York City."

The Statement of Audit Changes also imposed minimum income tax against petitioners.

On January 24, 1979, a Notice of Deficiency was issued against petitioner Louis Lippman asserting additional tax due of \$1,671.97 (New York State tax of \$1,245.82 and New York City tax of \$426.15), plus interest of \$110.20, for a total due of \$1,782.17. On January 24, 1979, a Notice of Deficiency was issued against petitioner Dorothy Lippman asserting additional tax due of \$2,341.45 (New York State tax of \$1,768.87 and New York City tax of \$572.58), plus interest of \$154.33, for a total due of \$2,495.78.

3. On or about April 2, 1979, petitioners filed an amended 1977 New York State Income Tax Nonresident Return. On the return, no change of state residence was indicated and no New York City nonresident earnings tax was computed. Petitioners claimed that they were full-year nonresidents during 1977.

4. Petitioners claimed that they moved permanently to Florida from New York in May, 1974; that all appropriate medical records relating to their health were transferred to Florida in 1975; and that their home in New York had been for sale since they moved to Florida.

5. In an affidavit dated January 5, 1982, petitioners stated:

"Since leaving New York in 1974, we have continuously maintained our home in Florida. We kept our old house in Brooklyn for a time since it provided a convenient place to stay when we visited our son and family. However, once they purchased a home (spring, 1976) which could accommodate us on our visits to New York, we began our efforts to sell the property. We sold the house in July, 1979. Although the house was available to be used during the three year period it was on the market, we nevertheless stayed with my son in his new home on our visits.

We left New York in 1974 with no intention of ever returning to live there again. Florida has been our home ever since and we intend to live here the rest of our lives."

6. A letter from Mr. Lippman's ophthalmologist states that Mr. Lippman has been his patient since November 12, 1976 and that it is essential for Mr. Lippman to remain near his ophthalmologist. The letter was dated December 13, 1979. A "Medi-Log" card showing Mr. Lippman's address as 36 Island Avenue, Miami Beach, Florida and an issuance date of November 16, 1976 was also submitted to show that he had a heart condition. Mr. Lippman's current physician states that Mr. Lippman has been his patient since July 12, 1979 and that Mr. Lippman feels better since he moved to Florida and that he should continue to stay there. The note was dated October 29, 1979.

7. Petitioners opened a savings account on November 8, 1974 at the American Savings & Loan Association of Florida. A copy of two of the pages in the passbook showed deposits and withdrawals from June 7, 1978 to August 2, 1979, at which time the balance in the account was transferred to a new passbook. A copy of two of the pages from the new passbook showed transactions from October 2, 1979 to January 10, 1980, at which time the account was closed out. Copies of pages of the passbook were not submitted for the year at issue. It is also noted that petitioners reported on their Federal income tax return for 1977 interest income from East New York Savings Bank.

8. A loan statement from the American Savings & Loan Association of Florida, dated April 13, 1977, was submitted by petitioners. The loan was secured by their savings account (certificate account) and payment was due on April 13, 1978.

9. Petitioner Dorothy Lippman submitted a copy of a check drawn on the Jefferson National Bank of Miami Beach, Florida. The check was signed by her and dated November 21, 1977. The check number was hand written and it did not have a preprinted name and address on it.

10. Petitioners submitted a letter from the owner of the Lido Spa (a hotel and health resort) dated November 16, 1979, which stated that they "were residents of the Lido Apts., 36 Island Avenue, Belle Island, Miami Beach, Fla. 33139, from October, 1974 through April 30, 1977." No lease agreement was submitted, no evidence was submitted to show whether they occupied the same apartment during the entire period and no evidence was submitted to indicate whether the apartment was furnished or unfurnished. At the end of March, 1977, they signed a lease to rent an apartment in the Mimosa Condominium Apartments. However, a copy of the lease was not submitted.

11. Petitioners submitted an affidavit from their attorney who stated that petitioners placed their New York residence for sale in June of 1976 and entered into a contract of sale in July of 1979. He stated the reasons for the delay in the sale were that:

"a) At first the Lippmans attempted to sell the property without using a broker to save commission. Since they already lived in Florida for more than half the year, this did not work.

b) They then refused to give any broker an exclusive on the property and the brokers failed to come up with a buyer. Once they agreed to give an exclusive, they found a buyer.

c) The Lippmans had no pressing need to sell the house even though they no longer resided or were domiciled there. There is and was no mortgage on the premises. Their only expense was taxes which were less than \$1,000.00 per year and fuel which was minimal since they only spent the few summer months there. It was cheaper to keep it than stay in a hotel on their visits to New York."

He also stated that in every year, commencing with 1975, they have spent at least six to seven months of the year in Florida and at least one additional month in Wisconsin. A letter from their real estate broker indicated that Mr. and Mrs. Lippman consulted him about the sale of their home in the fall of 1977 and that in June, 1979 he contacted other brokers at which time a buyer was found. No explanation was submitted stating what actions Mr. and Mrs. Lippman took when they tried selling the house on their own.

12. Petitioners filed state income tax returns for 1975 and 1976 as New York State residents. They stated that they first filed a Florida tax return in 1978. In addition, they first registered to vote in 1978 and obtained Florida driver's licenses in that year. No mention was made whether petitioners owned a car and where the car was registered during 1977.

13. No evidence or documentation was submitted to show when petitioners removed their furniture and/or belongings from New York. Petitioners claimed that they moved to Florida because of Mr. Lippman's health. However, they only spent part of the year in Florida. They indicated that their New York period of residence was from May 4, 1977 to October 31, 1977. No will was submitted. Petitioners own four burial plots in New York State which they state were purchased for investment as well as for their eventual use.

14. Petitioners submitted a copy of their Federal income tax return for 1977. On Schedule B - Interest and Dividend Income, they reported \$4,775.00 from U.S. Treasury Bonds. The Audit Division made no subtraction modification

for this amount as required by section 612(c)(1) of the Tax Law. At a conference, it was asserted that \$3,200.00 of the interest was attributable to Mrs. Lippman and \$1,575.00 was attributable to Mr. Lippman.

CONCLUSIONS OF LAW

A. That the personal income tax imposed by Chapter 46, Title T of the Administrative Code of the City of New York is by its own terms tied into and contains essentially the same provisions as Article 22 of the Tax Law. Therefore, in addressing the issue presented herein, unless otherwise specified, all references to particular sections of Article 22 shall be deemed references (though uncited) to the corresponding sections of Chapter 46, Title T of the Administrative Code of the City of New York.

B. That section 605(b) of the Tax Law defines a nonresident as an individual who is not a resident. Section 605(a) of the Tax Law defines in part a resident as an individual who is domiciled in this state unless he maintains no permanent place of abode in this state, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in this state.

C. That a domicile once established continues until the person in question moves to a new location with the bona fide intention of making his fixed and permanent home there. The burden is upon any person asserting a change of domicile to show that the necessary intention existed [20 NYCRR 102.2(d)(2)].

D. That petitioners have failed to sustain the burden of proof imposed by section 689(e) of the Tax Law to show that they changed their domicile to Florida prior to or during 1977. They have not indicated the date on which they became domiciled in Florida (petitioners' affidavit contradicts Finding of Fact "12" supra) nor have they shown that the apartment they rented in Florida

was maintained by them during the periods they were outside said state. Petitioners spent time in their home in New York, stated on Form CR-60.1 that they were residents of New York State and City for the period May 4, 1977 to October 31, 1977, and filed New York State income tax resident returns for 1975 and 1976. It was not until 1978 that they registered to vote in Florida and obtained Florida driver's licenses. Therefore, petitioners have not proven that they were nonresidents of New York State and City during 1977 (see Zinn v. Tully, 54 N.Y.2d 713, revg. 77 A.D.2d 725).

E. That based on Finding of Fact "14", supra, the Audit Division is directed to reduce each petitioner's income by the amounts indicated and accordingly modify the notices of deficiency; and that, except as so granted, the petition is denied and the notices of deficiency are sustained.

DATED: Albany, New York

DEC 14 1982

STATE TAX COMMISSION

ACTING PRESIDENT



COMMISSIONER



COMMISSIONER

